

### **REMARKS**

This Application has been carefully reviewed in light of the Final Office Action mailed September 22, 2008. At the time of the Final Office Action, Claims 1-8, 10-12, 14-20 and 23-24 were pending in this Application. Claims 1-8, 10-12, 14-20 and 23-24 stand rejected. Claim 12 has been amended. Claims 9, 13, 21-22 and 25 were previously cancelled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

#### **Rejections under 35 U.S.C. §101**

Claims 12, 14-20 and 24 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In particular, the Examiner alleges that "A computer readable medium" may include non-statutory mediums such as carrier waves/signals. (Office Action, page 2). Although Applicant does not necessarily agree, Applicant has amended Claim 12 to recite: "A **tangible, non-volatile** computer readable **storage** medium storing a program of instructions ..." (amendments in bold underline). Such language clearly does not cover alleged "non-statutory mediums such as carrier waves/signals." Thus, Applicant respectfully requests that the §101 rejections be withdrawn.

#### **Rejections under 35 U.S.C. § 112**

Claims 12, 14-20, and 24 were rejected by the Examiner under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner alleges that the specification does not support the language "A computer readable medium..." (Office Action, page 2). As discussed above, Applicant has amended Claim 12 to recite "A tangible, non-volatile computer readable storage medium..." This language is supported in the specification, e.g., at page 9, lines 17-21:

The information handling system may include random access memory (RAM), one or more processing resources such as a central processing unit (CPU) or hardware or software control logic, ROM, and/or other types of nonvolatile memory.

and at page 13, lines 14-25:

Referring now to FIGURE 2, a block diagram depicting a driver stack incorporating teachings of the present disclosure is shown generally at 88. As mentioned above, one implementation of teachings of the present disclosure enables a program of instructions, storable on a computer-readable medium, to be implemented on information handling system 10 and to perform the various preferred operations discussed herein. In one embodiment, a filter driver incorporating teachings of the present disclosure may be implemented alongside one or more drivers included in an operating system running on information handling system 10.

Thus, Applicant respectfully requests that the §112, first paragraph rejections be withdrawn.

**The Amendments to Claim 12 should be entered.**

As discussed above, Applicant has amended Claim 12 to recite: “A **tangible, non-volatile** computer readable **storage** medium storing a program of instructions ...” (amendments in bold underline). These amendments do not require a new search by the Examiner, and do not otherwise place any significant burden on the Examiner. Therefore, Applicant respectfully submits that the amendments should be entered.

**Rejections under 35 U.S.C. §103**

Claims 1-8, 10-12, 14-20 and 23-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,549,977 to Horst et al. (“*Horst*”) in view of U.S. Patent Application Publication No. 2002/0138670 to Johnson (“*Johnson*”) further in view of U.S. Patent Application Publication No. 2002/0188801 by Green (“*Green*”).

Applicant submits that *Horst*, *Johnson*, and *Green*, alone or in combination, do not teach all elements of Applicant’s claims. For example, amended Claim 1 recites in part:

if the particular intercepted I/O operation is identified as a write operation to a data portion of a disk RAID volume, **returning a success status to the requesting application without** forwarding the write operation for processing or **caching the write operation**, such that the write operation is neither completed nor written to disk; (emphasis added)

The Examiner acknowledges that *Horst* in view of *Johnson* does not teach ***returning a success status*** for a write operation ***without caching*** the write operation, but alleges that *Green*, paragraph 0032 does teach this feature. (See Final Office Action, pages 9-10).

Applicant argued in its previous Response to Office Action dated May 12, 2008 that *Green* does not teach *returning a success status* for a write operation *without caching* the write operation. (May 12, 2008 Response to Office Action, pages 8-10). In response, the Examiner argues that:

Applicant interprets the *Green* reference in a way such that the write is only acknowledged once it is complete. However, *Green* teaches the acknowledgement of a write operation that is never cached or completed (paragraph 0032). *Green*'s system identifies acknowledged incomplete writes in order to re-transmit the write for completion. This means that the incomplete acknowledged write operation is never completed and a new write command must be transmitted in its place.

(Final Office Action, "Response to Arguments," pages 2-3).

The Examiner's claim that "Applicant interprets the *Green* reference in a way such that the write is only acknowledged once it is complete" is not accurate. For example, Applicant argued: "Alternatively, if *Green*'s "acknowledgement" is an acknowledgement that a data write operation was lost or incomplete, it is clearly not "a success status," as recited in amended Claim 1." (May 12, 2008 Response to Office Action, page 10). In other words, Applicant *did* consider the interpretation asserted by the Examiner, but found that such interpretation would fail to meet the relevant feature recited in Claim 1 because such an "acknowledgement" would be the *opposite* of "a success status."

The Examiner argues that "*Green*'s system identifies acknowledged incomplete writes in order to re-transmit the write for completion. This means that the incomplete acknowledged write operation is never completed and a new write command must be transmitted in its place." This proves Applicant's point. If *Green*'s "acknowledgement" is an acknowledgement of a lost or incomplete write that is returned to the write-requesting computer system to inform the computer system to re-transmit the write request, then the "acknowledgement" simply cannot be equated with "***a success status***" as recited in Claim 1.

Rather, following the Examiner's interpretation of *Green*, *Green's* "acknowledgement" would be a "*failure status*" such as a "lost write status" or "incomplete write status." Thus, using the Examiner's interpretation of *Green*, *Green* actually *teaches away* from "returning a success status to the requesting application without . . . caching the write operation," as recited in Claim 1.

Stated another way, under the Examiner's interpretation of *Green*, *Green's* system identifies incomplete/lost write requests such that the requesting computer can re-transmit the incomplete/lost write until the write is successfully completed. This is fundamentally different than Claim 1, which covers a technique for informing a requesting application that a write operation has been successfully completed without actually completing, or even caching, the write operation.

For at least these reasons, even the Examiner's interpretation of Paragraph 0032 cannot be interpreted as teaching returning a success status for a write operation without caching the write operation. Therefore, none of *Horst*, *Johnson*, or *Green* teach "... returning a success status to the requesting application without ... caching the write operation, such that the write operation is neither completed nor written to disk," as recited in Claim 1.

For at least these reasons, Claim 1 is allowable over the proposed combination of *Horst*, *Johnson*, and *Green*. Thus, Applicant respectfully requests reconsideration and allowance of amended Claim 1, as well as Claims 2-3 and 23 that depend from Claim 1. In addition, for analogous reasons, Applicant requests reconsideration and allowance of amended independent Claims 4 and 12, as well as Claims 5-8, 10-12, 15-20, and 24 that depend therefrom.

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### CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant believes there are no fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2689.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorney for Applicant



Eric M. Grabski  
Reg. No. 51,749

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SEND CORRESPONDENCE TO:

BAKER BOTTS L.L.P.

CUSTOMER ACCOUNT NO. **23640**

512.322.2689

512.322.8383 (fax)